

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01331

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His under other than honorable conditions discharge be upgraded to honorable.

APPLICANT CONTENDS THAT:

He was young and a long way from home. He was befriended by bad people and felt trapped with no way out.

The applicant submits no supporting documentation.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 2 August 1974. On 1 October 1976, he was tried and convicted by a general court-martial of larceny, uttering a false check and wrongfully using a military identification card and a commissary exchange card. He was sentenced to a bad conduct discharge, confinement at hard labor for six months, forfeiture of \$140.00 pay per month for six months and reduction to the grade of airman basic. The convening authority remitted any unserved confinement and forfeitures on 11 February 1977 and approved the remainder of the sentence.

The applicant was discharged on 6 April 1977. His service characterization is listed as under than honorable conditions.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial. The applicant requests his discharge be upgraded to honorable. After a review of the applicant's submission, it does not appear he is aware that his

service characterization is actually under other than honorable conditions.

Title 10 U.S.C 1552(f) limits the Boards ability to correct court-martial records. Specifically, it permits the correction of a record to reflect actions taken by a reviewing authority and the correction of records related to action on the sentence of courts-martial for the purpose of clemency.

The applicant alleges no error or injustice. There was no error with the processing of the court-martial. He pled not guilty at trial; however, the court adjudged guilt based on the evidence presented by the prosecution. The approved sentence was below the maximum possible sentence of a dishonorable discharge, confinement at hard labor for five years, forfeiture of all pay and allowances and reduction to E-1.

Rules for Court-Martial 1003(b)(8)(C) states that a bad conduct discharge is designed as punishment for bad conduct. It also indicates that a bad conduct discharge is more than just a service characterization; it is a punishment for crimes committed while a member of the Armed Forces. Additionally, the discharge was well within the legal limits and an appropriate sentence for the offenses committed.

Clemency in this case would be unfair to those individuals who honorably served their country while in uniform.

The complete JAJM evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 25 June 2012 (Exhibit D) for review and comment within 30 days. As of this date, this office has received no response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After careful consideration of the applicant's request and the available evidence of record, we find no evidence which indicates that the applicant's service characterization, which had its basis in his conviction by general court-martial and was a part of the

sentence of the military court, was improper or that it exceeded the limitations set forth in the Uniform Code of Military Justice (UCMJ). We have considered applicant's overall quality of service, the general court-martial conviction which precipitated the discharge, and the seriousness of the offenses to which convicted. In the interest of justice we considered upgrading the discharge based on clemency; however, there was no evidence submitted to compel us to recommend granting the relief sought on that basis. Therefore, in the absence of evidence to the contrary, we find no basis upon which to recommend granting the relief sought.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-01331 in Executive Session on 20 September 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 5 Apr 12.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLOA/JAJM, dated 30 May 12.
- Exhibit D. Letter, SAF/MRBR, dated 25 Jun 12.

Panel Chair